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1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 CASE NO. 14-CV-2703
5 - - -

6 ESTATE OF JAMES OSCAR :
7 SMITH and HEBREW :
8 HUSTLE, INC., :
9 Plaintiff, :
10 vs. :
11 CASH MONEY RECORDS, :
12 INC., UNIVERSAL :
13 REPUBLIC RECORDS, an :
14 unincorporated division :
15 of UMG RECORDINGS, :
16 INC., UNIVERSAL MUSIC :
17 GROUP DISTRIBUTION, :
18 CORP., EMI MUSIC :
19 PUBLISHING MANAGEMENT, :
20 LLC, UNIVERSAL :
21 MUSIC-MGB NA, LLC, :
22 WARNER/CHAPPELL MUSIC, :
23 INC., SONY/ATV MUSIC :
24 PUBLISHING, LLC, AUBREY :
25 DRAKE GRAHAM p/k/a :
26 BOI-1DA, JORDAN EVANS, :
27 APPLE, INC., and AMAZON :
28 DIGITAL SERVICES, :
29 INC., :
30 Defendants. :

31 DEPOSITION UNDER ORAL EXAMINATION OF
32 STEPHEN HACKER
33 New York, New York
34 Thursday, May 14, 2015

35
36
37
38 REPORTED BY: DANA N. SREBRENICK, CRR CLR
39 JOB NO. 93597

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2 Transcript of the deposition of
3 STEPHEN HACKER, called for Oral
4 Examination in the above-captioned
5 matter, said deposition taken pursuant
6 to District Court Rules of Practice
7 and Procedure, by and before DANA N.
8 SREBRENICK, a Federally-Approved
9 Certified Realtime Reporter, a New
10 Jersey Certified Court Reporter, a
11 Certified Livenote Reporter, and a
12 Notary Public for the State of New
13 York, at the offices of MITCHELL
14 SILBERBERG & KNUPP LLP, 12 East 49th
15 Street, 30th Floor, New York, New
16 York, commencing at 10:00 a.m.

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2 APPEARANCES:

3

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20 Sony/ATV, Aubrey Drake Graham

21 Matthew Jehu Samuels, Jordan

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2 APPEARANCES: (Continued.)

3

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6 Directions to Witness Not to Answer

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8 208 15

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10 Request for Production of Documents

11 Page Line

12 33 254

13 35 13

14 87 24

15 153 16

16 157 16

17 159 7

18 165 22

19 178 9

20 189 22

21 208 5

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23

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25

1 S. Hacker

2 THE VIDEOGRAPHER: This is the
3 start of disk labeled No. 1 in the
4 videotaped deposition of Stephen
5 Hacker in the matter of The Estate of
6 James Oscar Smith and Hebrew Hustle,
7 Inc., v. Cash Money Records, Inc., et
8 al.

9 Today is May 14, 2015. The time
10 is approximately 10:15 a.m.

11 Appearances will be noted on the
12 stenographic record.

13 Will the court reporter please
14 swear in the witness.

15 (Whereupon, the witness is sworn
16 in.)

17 MS. LEPIERA: Christine Lepera,
18 counsel for certain of the defendants
19 in the case of Estate of James Oscar
20 Smith and Hebrew Hustle versus Cash
21 Money Records, specifically Defendants
22 BMI Music Publishing Management;
23 Warner/Chappell Music, Inc.; Sony/ATV
24 Music Publishing, LLC; Aubrey Drake
25 Graham, professionally known as Drake;

1 S. Hacker

2 and Amazon Digital Services, Inc.

3 MS. ARATO: Cynthia Arato,
4 representing Cash Money Records and
5 the UMG entities.

6 MR. MOTTO: Anthony Motto for
7 plaintiffs.

8 STEPHEN HACKER, residing at 7759
9 Tennyson Court, Boca Raton, Florida
10 33433, having first been duly sworn by
11 the Notary Public of the State of
12 New York, was examined and testified
13 as follows:

14 - - -

15 DIRECT EXAMINATION BY MS. LEPERA:

16 - - -

17 Q. Good morning, Mr. Hacker.

18 A. Good morning.

19 Q. Okay. Have you ever been
20 deposed before?

21 A. No.

22 Q. Okay. So let me give you some
23 basic guidelines. I am sure your counsel
24 has already given them to you, but I will
25 give you some of these guidelines so that

1 S. Hacker

2 A. No.

3 Q. Okay. So when you say you
4 connected songwriters to artists, were
5 these songwriters persons that you were
6 managing?

7 A. Yes.

8 Q. Did you connect any songwriters
9 that you were not managing --

10 A. Yes.

11 Q. -- to artists?

12 Okay. And with respect to the
13 work that you say you did with them in
14 connection with a studio -- strike that.

15 Okay. So, coming to 2011, you
16 decided to form Hebrew Hustle, Inc., to
17 formalize a music publishing business; is
18 that -- is that fair to say?

19 A. Yes, and a -- yes.

20 Q. And a production company?

21 A. Yes.

22 Q. Okay. And is there any
23 distinction in your mind between those two
24 roles?

25 A. Yes.

1 S. Hacker
2 of Matthew Del Giorno. He's written songs
3 for Cash Money Records artist Little
4 Wayne.

5 I have another songwriter by the
6 name of Roger Dickerson, who's also
7 written songs that I licensed to Cash
8 Money Records.

9 And several others.

10 Q. Okay. Now, in connection with
11 the licensing that you've referred to, do
12 you do any administration?

13 A. I do some.

14 Q. Okay. Do you administer any of
15 these songs you just mentioned?

16 A. Yes.

17 Q. As Hebrew Hustle, Inc.?

18 A. Yes.

19 Q. Okay. Explain exactly how you
20 administer the songs you just mentioned.
21 Or how -- excuse me, how Hebrew Hustle,
22 Inc., administers the songs that you just
23 mentioned?

24 A. We negotiate and send licenses
25 to the record label for the use and

1 S. Hacker

2 register the copyrights and register with
3 the performing rights societies.

4 Q. Okay. That is the sole extent
5 of the administration that Hebrew Hustle
6 does in connection with any of its
7 publishing activities?

8 A. There could be more.

9 Q. Well, give my any further
10 administration activities other than what
11 you just mentioned, which is negotiating
12 the license agreement, the record label
13 and filing copyright registrations?

14 A. Paying our songwriters.

15 Q. Anything else?

16 A. Registrations.

17 Q. We went through that already.

18 A. That's about it.

19 Q. Okay.

20 MS. LEPERA: I'm going to mark,
21 as Hacker 1, Notice of Rule 30(b)(6)
22 deposition.

23 (Exhibit Hacker 1, Notice of
24 Rule 30(b)(6) deposition, marked for
25 identification.)

1 S. Hacker

2 A. No.

3 Q. Okay. So then, following
4 forward -- moving forward, what, if
5 anything, did you then learn about the
6 release of this third album by Drake prior
7 to its release?

8 A. I recall him releasing a single,
9 "Started From The Bottom," which he
10 released, I believe, Grammy night. And
11 that was the entrance, I guess you could
12 say, to the album.

13 Q. Okay. Do you recall when you
14 learned that or heard that?

15 A. I said that in my last answer.

16 Q. Okay.

17 MS. LEPERA: Can you read the
18 witness's answer --

19 BY MS. LEPERA:

20 Q. Actually, you -- you can answer
21 me again. Answer the --

22 A. Grammy -- the Grammy -- it would
23 be the twenty- -- 2013 Grammy awards.

24 Q. That's when you heard the
25 single?

1 S. Hacker

2 A. Yes.

3 Q. Okay. Is that when you first
4 learned that it was going to be released?

5 A. Yes.

6 Q. Or that it was released? Okay.

7 After that period of time, what
8 if anything further did you hear or learn
9 about Drake's upcoming third album?

10 A. Much of the same, that he was
11 working on it. And I was submitting music
12 from my -- my producers and songwriters in
13 order to co-write or produce a record on
14 the album.

15 Q. Who were you submitting your
16 music to?

17 A. His management.

18 Q. Specifically who?

19 A. Oliver.

20 Q. Anybody else?

21 A. No.

22 Q. Okay. And what happened in
23 connection with your submissions?

24 A. We spoke many times over e-mail,
25 and there was interest by Oliver in .

1 S. Hacker

2 several of the works. He had asked me to
3 hold on to some of the works that I had
4 sent him, as Drake may be interested in
5 working as a joint work, adding his
6 portion to it.

7 And that's pretty much it, just
8 maintained communication, submitted music
9 in hopes of collaborating with Drake for
10 the album.

11 Q. Uh-huh. Those e-mails, do they
12 still exist?

13 A. I should have some.

14 Q. Okay.

15 MS. LEPERA: I call for the
16 production of those e-mails as between
17 Mr. Drake's representatives and
18 Mr. Hacker that he's referring to.

19 MR. MOTTO: We'll take it under
20 advisement.

21 MS. LEPERA: Okay. I would
22 believe they were largely encompassed
23 already, but we'll double-check that.
24 In any event, I'll call for their
25 production.

1 S. Hacker

2 Q. And did you review any specific
3 Internet sites that discussed anticipated
4 songs that were going to be released on
5 the upcoming Drake album?

6 A. Yes.

7 Q. What sites were those?

8 A. Billboard.com.

9 Q. Anything else?

10 A RapRadar.com

11 Q. Anything else?

¹² A. Not that I recall.

¹³ (Exhibit Hacker 3 Document)

14 Bates-numbered 0005 through 0011

15 marked for identification.)

¹⁶ (whereupon a brief discussion

17 is held off the record.)

18 BY MS. TEFEREA.

Now I'm showing you what we've

20 marked

MS. LEADER 1. Vol. 1 no. 1, fol. 2

22 BY MC FEDERA

23 Q. -- as Hacker 3, which are a
24 series of documents that have been
25 produced by you in this action and

Page 41

1 S. Hacker

2 Bates-stamped numbers 0005 through 0011.

3 Can you tell me what these
4 e-mails refer to?

5 A. I was attempting to establish
6 contact with the songwriter or publisher
7 for a composition known as "Jimmy Smith
8 Rap."

9 Q. Okay. So this e-mail is dated
10 September 17, 2013, correct?

11 A. Uh-huh.

12 Q. On the first page.

13 And then they continue and
14 they -- the last e-mail, even though
15 they're not in -- particularly in order
16 here, there is an e-mail dated
17 September 24, 2013.

18 So these e-mails took place
19 during the week of September 17, 2013 to
20 September 24, 2013, correct?

21 A. Yes.

22 Q. Okay. What prompted you to
23 engage in this communication on
24 September 17, 2013 with, as you've
25 indicated, the Estate of Jimmy Smith?

1 S. Hacker

2 A. I was searching online, on the
3 Internet, to possibly sign a songwriter or
4 songwriters that wrote compositions on
5 Drake's album, as music publishers often
6 do. And I was attempting to locate the
7 parties that controlled the rights of
8 Jimmy Smith.

9 Q. Okay. Drake's album was
10 released on September 24th, correct?

11 A. Uh-huh.

12 Q. So how did you know what was on
13 Drake's album on September 17th?

14 A. As I said, I was searching the
15 Internet and I came across the credits for
16 Drake's album, which listed "Jimmy Smith
17 Rap" as a sample on the album.

18 Q. When was that?

19 A. Around September 17th.

20 Q. What site were the credits
21 listed for Drake's album that had not yet
22 been released?

23 A. I can't remember.

24 Q. So all the liner notes were
25 posted; is that what you're saying?

1 S. Hacker

2 A. Correct.

3 Q. And -- and you saw full liner
4 note description of all of the songs with
5 all of the credits of Drake's album before
6 it was released?

7 A. Correct.

8 Q. Okay. And you cannot recall
9 where that site was?

10 A. Correct.

11 Q. Did you print out any copies?

12 A. No.

13 Q. Uh-huh. And what did you do in
14 terms of communication, if anything, to
15 any of the Drake representatives that you
16 had been communicating with, with respect
17 to what you saw?

18 A. Can you repeat that?

19 MS. LEPERA: Can you read it
20 back?

21 (Whereupon, the question is read
22 back by the reporter.)

23 A. Nothing.

24 BY MS. LEPERA:

25 Q. Why not?

1 S. Hacker

2 A. Because this was an action that
3 had nothing to do with Drake's
4 representatives.

5 Q. What action was that, that had
6 nothing to do with Drake's
7 representatives?

8 A. Seeking to sign songwriters to
9 exclusive agreements.

10 Q. With respect to material that
11 was going to be on Drake's album?

12 A. Correct.

13 Q. That has nothing to do with
14 Drake?

15 A. Not exactly, no.

16 Q. Okay. So is it your testimony,
17 sir, that you saw, before Drake's album
18 was released, something indicating that on
19 one of his songs on his upcoming album
20 there was going to be something called the
21 "Jimmy Smith Rap"?

22 Is that -- is that correct?

23 A. Yes.

24 Q. That's your testimony, okay.

25 And you had no knowledge of what

1 S. Hacker

2 the "Jimmy Smith Rap" was when you saw
3 that, correct?

4 A. I'm not sure what you mean by
5 that.

6 Q. Well, had you heard the "Jimmy
7 Smith Rap"? Were you a fan of Jimmy
8 Smith?

9 You didn't know what the "Jimmy
10 Smith Rap" was when you saw this series of
11 credits, right?

12 A. No, I did know what it was.

13 Q. You did? How did you know what
14 it was?

15 A. Because when I was searching the
16 Internet and I came across the liner
17 notes, I also heard the "Jimmy Smith Rap."

18 Q. Before that, sir?

19 A. Pardon me?

20 Q. Before you saw the liner notes
21 and found the "Jimmy Smith Rap" recorded
22 music was going to be, as you put it, in
23 Drake's forthcoming album that had not
24 been released, now disclosed; before that,
25 you had no knowledge of what the "Jimmy

1 S. Hacker

2 Smith Rap" was, correct?

3 A. Yes.

4 Q. Correct -- I'm correct?

5 A. Yes.

6 Q. Okay. So then when you saw that
7 you decided to go listen to it; is that
8 correct?

9 A. Yes.

10 Q. Okay. Did you listen to
11 anything else that you saw on those
12 credits?

13 A. Yes.

14 Q. What else did you listen to?

15 A. Different songs.

16 Q. Okay. Did you listen to
17 anything else for the purpose of signing
18 the songwriters or the publishing, as you
19 put it, to any of the music that was going
20 to be on Drake's album?

21 A. There was a possibility.

22 Q. Did you look to it for that
23 purpose?

24 A. For what purpose?

25 Q. Well, looking to see if you

1 S. Hacker

2 could find ways to obtain rights to any of
3 the material that was going to be on
4 Drake's forthcoming album?

5 A. Yes.

6 Q. Okay. So you were searching to
7 see whether or not there had been some
8 openings, let's say, for rights; is that
9 right?

10 A. Yes.

11 Q. Okay. And you didn't
12 communicate this to anyone in connection
13 with the potential release of Drake's
14 album, correct?

15 A. Correct.

16 Q. Before the release?

17 A. Yes.

18 Q. That you were doing this; you
19 didn't communicate that, correct?

20 A. Correct.

21 Q. So your intent was to look for
22 openings in rights, sign those rights and
23 then disclose that to the Drake
24 representatives or others after the
25 release; was that your intent?

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1 S. Hacker

2 A. Can you repeat that?

3 MS. LEPERA: Read it back.

4 (Whereupon, the question is read
5 back by the reporter.)

6 A. Yes.

7 MS. LEPERA: Excuse me one
8 second. I guess we do have to go off
9 the record for the coffee; I'm sorry.

10 THE VIDEOGRAPHER: The time is
11 approximately 10:49 a.m.

12 We're off the record.

13 (Whereupon, a brief recess is
14 taken.)

15 THE VIDEOGRAPHER: The time is
16 now 10:50 a.m.

17 We are on the record.

18 BY MS. LEPERA:

19 Q. So going back to the liner notes
20 that you say you saw on a music website
21 prior to the release of the Drake third
22 album, what is it about that particular
23 "Jimmy Smith Rap" that made you think
24 there was, you know, a potential opening
25 for you to gain rights?

1 S. Hacker

2 A. Because I saw that the sound
3 recording was listed as being licensed and
4 there was no mention of publishing being
5 licensed.

6 Q. Okay. And did you look to see
7 that with respect to all of the samples
8 that you saw credited, as to whether or
9 not there was a -- both a master license
10 for the sound recording and a publishing
11 license?

12 A. Yes.

13 Q. So you were looking to see if
14 there were any openings in connection with
15 all of these samples; is that correct?

16 A. I was looking for songwriters
17 who were writing on the album, whether
18 they were a sample or whether they were a
19 melody writer, whether they were a lyric
20 writer; any form of a songwriter that had
21 an opening where there was an opportunity
22 to represent their rights.

23 Q. Okay. And, again, you did all
24 this without any disclosure to anybody in
25 connection with the potential -- with the

1 S. Hacker

2 anticipated release of the Drake's third
3 album, correct?

4 A. Yes.

5 Q. And you have published materials
6 online that indicate that you have a
7 relationship with Cash Money, correct?

8 A. Yes.

9 Q. You still have a relationship
10 with Cash Money?

11 A. Yes.

12 Q. What is the nature of that
13 relationship?

14 A. Producers that I represent and
15 songwriters that I represent contribute to
16 releases that they exploit.

17 Q. Okay. And who is your contact
18 at Cash Money, currently?

19 MR. MOTTO: Objection to the
20 form of the question.

21 BY MS. LEPERA:

22 Q. First, who do you speak to at
23 Cash Money?

24 A. The CEO.

25 Q. And who is that?

1 S. Hacker

2 A. Ryan "Baby" Williams.

3 Q. Okay. And when was the last
4 time you spoke to him?

5 A. On the phone? Is that what
6 you're asking?

7 Q. Either way, phone, in person,
8 when was the last time you spoke to him?

9 A. About two months ago.

10 Q. And is he aware that you're
11 suing his company?

12 A. Yes.

13 Q. Okay. And have you had any
14 communications with him about that?

15 A. Yes.

16 Q. And what have the communications
17 been?

18 A. I told him before it was
19 happening that he should avoid it.

20 Q. Okay. And? What -- what was
21 the response?

22 A. He didn't really seem to care.

23 Q. Was there any response, a verbal
24 response?

25 A. Yeah.

1 S. Hacker

2 Q. What was the verbal response?

3 A. "I'll look into it."

4 Q. Okay. And what date was this
5 conversation?

6 A. I would say February of --
7 February before this was filed, two months
8 before the filing.

9 Q. Okay. How about prior to your
10 attempt to gain rights in certain
11 materials that were going to be on the
12 Drake album? Did you communicate with him
13 about that then?

14 A. No.

15 Q. Did you communicate with anybody
16 at Cash Money about what you were
17 attempting to do?

18 A. No.

19 Q. Did you communicate with any
20 representatives of any of the other
21 defendants in connection with this action
22 prior to the release of Drake's album, as
23 to what your intent was in terms of trying
24 to gain rights to the "Jimmy Smith
25 Right" -- "Rap" before the release?

1 S. Hacker

2 A. I'm going to need you to repeat
3 that.

4 MS. LEPERA: You can read it
5 back to him.

6 (Whereupon, the question is read
7 back by the reporter.)

8 A. No.

9 BY MS. LEPERA:

10 Q. Okay. Let's look back at
11 Exhibit 3.

12 When you wrote to -- by the way,
13 do you know who Jia is, or was when you
14 wrote to her?

15 A. I knew that she was a
16 representative in some form to Jimmy
17 Smith's music.

18 Q. How did you know that?

19 A. Because she was listed as a
20 contact on the BMI database for some of
21 his works.

22 Q. Okay. So what was the first
23 step that you took when you saw the liner
24 notes prior to the release of the Drake
25 album reflecting the "Jimmy Smith Rap"

1 S. Hacker

2 Q. Okay. The last e-mail of Ms. --
3 Jia, which is page 10, second-to-last page
4 of this exhibit, it says at the top, "Hi,
5 Stephen. I have forwarded your request.
6 They will be contacting you shortly."

7 Do you -- did you know at that
8 point in time who "they" were?

9 A. No.

10 Q. Okay. Looking at your e-mail to
11 her -- now, this is later, September 24,
12 2013, you -- you state here to her that
13 "It could" -- in the third paragraph; I'm
14 going to quote.

15 MR. MOTTO: Is this page 7?

16 MS. LEPERA: Yes.

17 BY MS. LEPERA:

18 Q. Quote, It could very well be
19 that a PA copyright form was never filed
20 for the underlying composition because the
21 Elektra label was not going to pay out
22 mechanical royalties on this title because
23 it was simply an outro speech. That would
24 take care of the label not paying
25 mechanical royalties from the -- is that

1 S. Hacker

2 Over the Top? -- album sales to the
3 writer.

4 And then you continue, "But what
5 if the underlying composition was to be
6 exploited in another medium down the
7 line?"

8 Do you see that sentence?

9 A. Yes.

10 Q. And you wrote that sentence?

11 A. Yes.

12 Q. Okay. And when you wrote that
13 sentence, you were aware, were you not,
14 that there had never been any mechanical
15 royalties or copyright registration filed
16 in connection with the, quote, outro
17 speech, that is the underlying words on
18 the "Jimmy Smith Rap" recording, correct?

19 A. No.

20 Q. You were not aware of that?

21 A. I didn't know if there were any
22 mechanical royalties that may have been
23 paid to Jimmy Smith or his estate at that
24 point. I just knew that there was not a
25 copyright registration filed.

1 S. Hacker

2 question.

3 Q. Oh. Well, you say there was no
4 mechanical royalty or license paid in
5 connection with the outro speech, the
6 "Jimmy Smith Rap" words on the Over the
7 Top album, correct?

8 A. That's my understanding.

9 Q. Okay. So how was that licensed?

10 A. To who?

11 Q. To whoever exploited it?

12 A. I wasn't around when it was
13 original -- when those agreements or
14 licenses were done for all the
15 compositions on the album, so I don't
16 know.

17 Q. Have you seen any mechanical
18 royalties or any publishing -- publishing
19 royalties, performance, any type of
20 publishing-related income for the outro
21 speech that is the Jimmy Smith words on
22 the recording "Jimmy Smith Rap" from the
23 beginning of time to today?

24 A. No.

25 Q. And you, in fact, are well aware

1 S. Hacker

2 respect to the composition?

3 A. Nothing at this time.

4 Q. What is in the works, if
5 anything, with respect to any of the
6 publishing rights Hebrew Hustle
7 purportedly got in connection with the
8 composition, other than to proceed with
9 this lawsuit?

10 A. If somebody else wanted to use
11 the composition, we would engage in a
12 licensing agreement for that.

13 Q. That's not what I asked you.

14 MS. LEPERA: Move to strike.

15 BY MS. LEPERA:

16 Q. What else has Hebrew Hustle done
17 to exploit the purported composition other
18 than engage in this lawsuit?

19 A. I think that was your previous
20 question, not the question that you just
21 asked me.

22 Q. I'm asking it again because I'm
23 not getting an answer, so I'm asking this
24 question a different way to make sure
25 we're on the same page.

1 S. Hacker

2 A. I said, at this time, nothing
3 else besides the registering, filing of
4 the copyright and trying to correct this
5 infringement.

6 Q. Okay. And what about -- is
7 anything contemplated to be done to
8 license the composition for any use?

9 And when -- again, when I say
10 "composition," I'm not conceding it's a
11 composition.

12 Anything contemplated?

13 A. If somebody would like to use
14 the composition, they would contact the
15 appropriate party, which would be me, and
16 we would license or try to work out an
17 agreement with them.

18 Q. Is anything contemplated by
19 you -- is anything contemplated by you as
20 the publisher?

21 A. No.

22 Q. So is it correct, Mr. Hacker,
23 that the only reason why you went out to
24 obtain what you call the rights in this
25 spoken word outro was so that you could

1 S. Hacker

2 sue Cash Money, Drake and the rest of the
3 defendants?

4 A. No.

5 Q. Well, what other reason was
6 there to get it, since you haven't done
7 anything with it?

8 A. We attempted to resolve this
9 pre-litigation.

10 Q. Okay. Let me -- let me then ask
11 this: Isn't, in fact, the only reason why
12 you went out and obtained the rights in
13 this so-called composition so that you
14 could seek to get money from Drake and the
15 other defendants in connection with the
16 third album, correct?

17 A. Yes.

18 Q. The publishing agreement doesn't
19 say any of that, correct?

20 A. Say any of what?

21 Q. That that was the motivation and
22 the intent behind obtaining the rights?

23 MR. MOTTO: Objection to the
24 form of the question.

25 A. No.

1 S. Hacker

2 MR. MOTTO: Objection to the
3 form of the question.

4 A. He's actually listed on the back
5 of the album, once I obtained a copy of
6 the album, as the only person who is
7 attached to that title.

8 BY MS. LEPERA:

9 Q. Well, let's be clear. You
10 looked at the actual liner notes for the
11 Jimmy Smith albums, correct?

12 A. Correct.

13 Q. And you agree with me there's
14 not a single reference to any songwriter
15 or author to any of the words on the
16 "Jimmy Smith Rap," correct?

17 A. No.

18 Q. You don't agree with me?

19 A. No.

20 Q. Okay.

21 MS. LEPERA: Let's mark this.

22 We're going to mark this and --
23 and keep the original. Let's just put
24 it on here as Hacker 5.

25 (Whereupon, a brief discussion

1 S. Hacker

2 is held off the record.)

3 (Exhibit Hacker 5, Jimmy Smith
4 album cover and record, marked for
5 identification.)

6 BY MS. LEPERA:

7 Q. Okay. I'm going to show --

8 MR. MOTTO: May -- may I see
9 that, before --

10 MS. LEPERA: Yes.

11 BY MS. LEPERA:

12 Q. I'm going to show you -- well,
13 let's not get fingerprints on it. You can
14 take a look at it.

15 MR. MOTTO: Can I see the --

16 MS. LEPERA: Yeah, sure.

17 Okay, thank you.

18 BY MS. LEPERA:

19 Q. Okay. I'm going to -- because
20 we only have one copy of this, and
21 obviously we can try to make copies of
22 it -- I am going to show the witness the
23 two sides of the Off The Top vinyl album
24 of Jimmy Smith.

25 The -- Side 1 has three tracks.

1 S. Hacker

2 haven't seen that.

3 MR. MOTTO: I think we've
4 produced it, but I'll check. If we
5 haven't produced it, we'll produce it.

6 MS. LEPERA: And maybe on a
7 break, if -- if you could look to see
8 if this --

9 MR. MOTTO: I got a thousand
10 pages of documents.

11 MS. LEPERA: -- or talk to your
12 client and maybe he can tell you
13 exactly --

14 BY MS. LEPERA:

15 Q. What site was it on, by the way?

16 A. Google.

17 Q. Google. Okay.

18 So other than this document that
19 we don't have in front of us, can you tell
20 me any information that you have from any
21 eyewitness source as to who wrote the
22 words on the "Jimmy Smith Rap"?

23 A. I've never spoken to any
24 eyewitnesses that were in the studio when
25 that was composed.

1 S. Hacker

2 Q. Did you discuss what you were
3 looking for with him at all --

4 A. No.

5 Q. -- specifically?

6 And -- and -- okay.

7 Did you discuss specifically
8 with anyone, representative of any of the
9 defendants, what you were looking for?

10 A. I've left that to the attorneys.

11 Q. Okay. Have you had any
12 communications with anyone connected with
13 Young Money regarding this claim?

14 A. Yes.

15 Q. And with whom?

16 A. A gentleman by the name of
17 Jermaine Preyan.

18 Q. And who is Jermaine Preyan?

19 A. He is -- he's known as Mack
20 Maine. I would say he is the day-to-day
21 representative of Young Money, if you
22 will.

23 Q. Okay. And tell me, first, when
24 you had this communication with Jermaine?

²⁵ A. He called me, similar to the

1 S. Hacker
2 conversation with Mr. Williams, trying to
3 get ahold of what's going on after months
4 of back-and-forth communication with the
5 respective attorneys. And he was a bit
6 belligerent on the phone. Some of my
7 clients have worked and have a continued
8 working relationship with Little Wayne
9 from Young Money, so he -- he told me,
10 Look, you know, you do a lot of work with
11 us. Why are you suing us? What's this
12 all about?

13 And I said, you know, Look, this
14 is -- this is to do with, you know, a song
15 that I have rights in, and we've tried to
16 clear it all up with, you know, with the
17 respective parties.

18 And he just didn't really seem
19 to understand what was going on for months
20 behind the scenes and just wanted to get
21 aggressive, and it didn't really go
22 anywhere.

23 Q. Was this after the lawsuit or
24 before the lawsuit?

25 A. This was after.

1 S. Hacker

2 Q. Okay. Are these the first
3 written communications that you had with
4 Mr. Janifer -- Janifer, period, concerning
5 this matter or otherwise?

6 A. Yes.

7 Q. Okay. Had you had a phone call
8 with him prior to this?

9 A. Yes.

10 Q. Okay. Can you identify
11 approximately when you had your initial
12 first verbal communication with
13 Mr. Janifer?

14 A. Wednesday, September 25th.

15 Q. And how is it you remember that
16 so precisely?

17 A. Because if you look at the first
18 e-mail at the end of the exhibit that you
19 just gave me, it states, "Raymond, it was
20 a pleasure chatting this morning" --

21 Q. And that was --

22 A. -- and that's dated Wednesday,
23 September 25th.

24 Q. And that was your first verbal
25 communication with him?

1 S. Hacker

2 A. Yes.

3 Q. Okay. And this is the day after
4 the album release; is that correct?

5 A. Yes.

6 Q. Okay. Do you see that you have
7 on the second page here a comment about
8 filing the Form PA?

9 "First and foremost" --

10 (Whereupon, a brief discussion
11 is held off the record.)

12 BY MS. LEPERA:

13 Q. Quote, First and foremost, a
14 Form PA must be filed with the United
15 States Copyright Office.

16 Do you see this reference on the
17 second -- on the last page of the exhibit
18 in your September 25th e-mail
19 communication?

20 A. Yes, I see it.

21 Q. Okay. And then you go on to
22 say, quote, This is the key to the federal
23 courthouse door.

24 Do you see that?

25 A. Yes.

1 S. Hacker

2 correct?

3 A. Potentially.

4 Q. Okay. And so, obviously, if you
5 in fact have a claim for, quote, potential
6 infringement damages, wouldn't you say
7 that is potentially more valuable than
8 simply getting a license in advance of a
9 use?

10 A. Potentially.

11 Q. And you knew that, correct?

12 A. Uh-huh.

13 Q. Can you --

14 A. Yes.

15 Q. -- say that audibly? Okay.

16 So why didn't you go to any of
17 your sources, whether it be Young Money or
18 Cash Money or Drake's people, before you
19 reached out to the Jimmy Smith estate and
20 said -- Jimmy Smith estate and say, I'm
21 acquiring rights to this; let's make a
22 deal?

23 A. I didn't have the rights to --
24 in my possession.

25 Q. But you were going to get them.

1 S. Hacker

2 A. I don't approach people until I
3 actually have rights to something. That
4 would be premature.

5 Q. Okay. But you knew you were
6 intent on doing so, correct?

7 A. Yes.

8 Q. Okay. You could have
9 communicated that, correct?

10 A. Why?

11 Q. Why not?

12 A. I didn't see the point of --

13 Q. Well, you wouldn't see the point
14 of saying, I'm going to sue you after you
15 release this album, so why don't you --
16 because I'm going to go get these rights,
17 or I'm -- I'm in the process of getting
18 these rights; why don't you -- let's talk
19 about this?

20 You didn't do any of that,
21 right?

A. My lawyers did that after --

23 Q. Before the release of the album.

24 Your lawyers didn't do anything
25 before the release of the album, correct?

1 S. Hacker

2 A. Correct.

3 Q. Okay. Why didn't you do that
4 before the release of the album?

5 A. I didn't want to.

6 Q. Why not?

7 A. I didn't -- like I said, it was
8 not apropos to approach somebody without
9 having the rights in the material.

10 Q. But it's apropos to let them sit
11 back and not know that you're going out to
12 get the rights when there's an imminent
13 release? That's apropos?

14 A. There's no obligation to contact
15 a record label if you're interested in
16 signing a songwriter on the album.

17 Q. Says who?

18 A. It's a separate --

19 Q. Are you a lawyer?

20 MR. MOTTO: Can you let him
21 respond?

22 A. I'm a music publisher.

23 BY MS. LEPERA:

24 Q. Okay. My point is simply this,
25 sir. You had the full opportunity and you

1 S. Hacker

2 chose not to communicate with people you
3 were attempting to do business with that
4 you were seeking to obtain rights on a
5 track that was going to be imminently
6 released on a wide scale, correct?

7 A. Correct.

8 Q. Okay.

9 MS. LEPERA: Okay. We're up to
10 8, right?

11 This is Hacker 8.

12 (Exhibit Hacker 8, Document
13 entitled Public Catalog, marked for
14 identification.)

15 MS. LEPERA: While we're at it,
16 let's do Hacker 9.

17 (Whereupon, a brief discussion
18 is held off the record.)

19 MS. LEPERA: Yeah, I'm not doing
20 Hacker 9 right now. Okay.

21 (Whereupon, a brief discussion
22 is held off the record.)

23 BY MS. LEPERA:

24 Q. Okay. So, Mr. Hacker, I'm
25 showing you a -- a series of printouts

1 S. Hacker

2 or Dr. Janifer?

3 A. Yes.

4 Q. Did you make these notes close
5 in time to when you testified that you
6 first found the liner notes of the Drake
7 forthcoming album on the Internet?

8 A. Yes.

9 Q. So sometime in -- in or around
10 September 17, 2013?

11 A. Yes.

12 Q. But not much prior to that,
13 correct?

14 A. Correct.

15 Q. Because you didn't know about
16 any of the tracks on the forthcoming Drake
17 album prior to seeing the liner notes,
18 correct?

19 A. Correct.

20 Q. Can you identify where on the
21 Internet you saw this set of liner note
22 credits, which website?

23 A. I can't recall.

24 Q. Did you take any -- did you
25 print it out?

1 S. Hacker

2 A. No.

3 Q. Print out the liner notes?

4 Did you make any notes of the
5 credits from the liner notes?

6 A. No.

7 Q. But you're a hundred percent
8 sure that's when the first time you found
9 any information relating to this Jimmy
10 Smith sample to be on the forthcoming --
11 sample to be on the forthcoming Drake
12 album?

13 A. Yes.

14 MS. LEPERA: This is 14.

15 (Exhibit Hacker 14, Document
16 Bates-numbered 0031 through 0034,
17 marked for identification.)

18 BY MS. LEPERA:

19 Q. You testified earlier that you
20 were not at BMI -- Hebrew Hustle was
21 not -- had no BMI affiliation prior to
22 your involvement with the Jimmy Smith
23 outro, correct?

24 A. Yes.

25 Q. Okay. And that you determined

1 S. Hacker

2 Q. Is that also your business
3 address?

4 A. Yes.

5 Q. So you work out of your home?

6 A. Yes.

7 Q. And Hebrew Hustle works out of
8 your home?

9 A. Yes.

10 Q. And Spliffington Management
11 works out of your home?

12 A. Yes.

13 MS. LEPERA: 21.

14 (Exhibit Hacker 21, Document
15 Bates-numbered 0053 and 0054, marked
16 for identification.)

17 BY MS. LEPERA:

18 Q. If you'd take a moment and look
19 at what we've marked as 21, a document
20 produced by plaintiffs, 0053, 0054,
21 appears to be an e-mail from you to
22 Dr. Janifer, February 25, 2014.

23 Do you recognize this document?

24 A. Yes.

25 Q. Did you send this document to

1 S. Hacker

2 Mr. Janifer in or about that time
3 attaching, as referred to in your e-mail,
4 an affidavit and, quote, the exact same
5 publishing agreement that you signed and
6 sent back to me on October 24, 2013, close
7 quote?

8 A. Yes.

9 Q. Okay. Who drafted the
10 affidavit, if you know, that's referred to
11 on the bottom of the page?

¹² A. I believe counsel.

13 Q. And you didn't draft it
14 yourself, did you?

15 A. No.

16 Q. Okay. And did you send this
17 document then to Mr. Janifer to have his
18 mother -- to Dr. Janifer to have his
19 mother sign?

20 A. Yes.

21 Q. Okay. And this, as we discussed
22 earlier, was in response to a query as to
23 whether or not she had been the signatory
24 on the original publishing agreement?

25 A. That's correct.

1 S. Hacker

2 (Whereupon, a brief recess is
3 taken.)

4 (Exhibit Hacker 24, Document
5 Bates-numbered 0120 through 0121,
6 marked for identification.)

7 THE VIDEOGRAPHER: The time is
8 now 3:28 p.m. This is the beginning
9 of Disk No. 4.

10 We are on the record.

11 BY MS. LEPERA:

12 Q. Mr. Hacker, I'm showing you
13 Exhibit 24.

14 Can you identify this document
15 for me?

16 A. Yes. It's a transfer of
17 copyright document.

18 Q. From what -- from whom to -- to
19 whom in connection with what?

20 A. From the Estate of James Oscar
21 Smith to Hebrew Hustle for the title
22 "Jimmy Smith Rap."

23 Q. And at the top there's a header;
24 it says, March 17, 2014, 10:39 p.m., Anita
25 M. Smith Johnson, and a -- and a fax

1 S. Hacker

2 number.

3 Do you see that?

4 A. Yes.

5 Q. Is that at or around the time
6 that you got this document signed by -- by
7 Anita Johnson?

8 A. Yep.

9 Q. Yes?

10 A. Yes.

11 Q. And attached to this transfer of
12 copyright is the affidavit that we had
13 looked at previously in draft, correct?

14 A. Yes.

15 Q. Executed by Ms. Johnson.

16 Yes?

17 A. Yes.

18 Q. Okay. Can I ask you to tell me
19 what is the good and valuable
20 consideration that Hebrew Hustle gave to
21 the estate for the transfer of the
22 copyright?

23 MR. MOTTO: Objection to the
24 form of the question.

25 A. The services of a music